Generally Speaking

Department of Law Monthly Report
MARCH, 2009

CIVIL DIVISION

Child Protection

New CINA cases based upon allegations in the Office of Children's Services (OCS) petitions:

The Anchorage Police Department responded to a report that an infant had been abducted. Upon further investigation, it appears that the allegations were untrue and that the mother was intentionally hiding the child to avoid child protection intervention. The mother has a history of making false accusations and it appears the mother may have mental health issues. OCS assumed emergency custody of both children in the home and ultimately placed them with their fathers.

A mother called OCS to request that the department take her son because she was suicidal and could not take care of him. The department had been working with the family for several years to stabilize the home, but those efforts were unsuccessful. The child had been in custody before for similar reasons. The father has a child protection history, lives out of state and is not involved with his child. OCS placed the child in foster care.

A local hospital reported that a new mother was showing no interest in bonding with or caring for her son and appeared confused. The mother also has a lengthy and documented history of drug use. OCS worked with the mother so that the baby could go with her to treatment under a safety plan. The mother failed to follow the safety plan and was not making progress in treatment. Due to the mother's actions, she could no longer have the infant with her in treatment and the child was placed in foster care. At the time of placement, the mother was unable to identify the father.

OCS was investigating possible sexual abuse of a three-year-old by her father. The child had physical signs of abuse, disclosed her father was her abuser, and the suspect had child pornography in the home. OCS tried to keep the family together through a safety plan where the mother agreed to only allow supervised contact between the child and her father. However, the mother failed to follow the safety plan and allowed unsupervised contact. To assure the ongoing safety of the child, OCS assumed emergency custody.

OCS received a report alleging physical abuse of three small children. Upon further investigation, the children disclosed that the abuser was the mother's boyfriend and father to one of the children. The family has a child abuse history in Washington and

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the family allegedly came to Alaska to evade Washington child protection services. After the children were interviewed, OCS assumed emergency custody. The fathers of the other two children were identified and they are working with the department towards reunification.

Numerous other children across the state were taken into custody as a result of serious risk of harm due to their parents' substance abuse, domestic violence and/or incarceration.

Commercial and Fair Business

Big Game Board Suspends Guide License

On March 24, the Big Game Commercial Services Board ("Board") revised the proposed decision of Administrative Law Judge ("ALJ") Rebecca Pauli and imposed a nine month suspension (rather than the six months recommended by the ALJ) and a $5000 fine (rather than a $5000 suspended fine recommended by the ALJ) against Texas big game guide-outfitter and transporter James Smith, who was convicted eight times in state court (based on a brown bear hunt he guided in 2004) and who also committed four federal violations (based on two mountain goat hunts he guided that same year). With regard to the other sanctions proposed by the ALJ, the board adopted the proposed decision and placed Smith on five years probation, reprimanded him, and ordered him to take a class on a guide's legal and ethical obligations.

Smith, as part of a plea agreement relating to the brown bear hunt, was convicted in 2005 on three counts of providing guiding services outside of his licensed area, two counts of knowingly providing false information on sealing certificates, and three counts of failing to submit hunt records. He served no jail time, and was fined $7200 (with $3200 suspended). For each of the two mountain goat hunts, Smith was served with two federal violation notices: one for conducting commercial activity on national forest lands without a special use authorization and one for providing guiding services in violation of the Lacey Act. Smith did not oppose the four violations and was fined a total of $3500.

The Division of Corporations, Business and Professional Licensing ("Division") filed an accusation against Smith on July 25, 2008 and a hearing was held on November 4, 2008. The ALJ issued a proposed decision on January 16, 2009. The ALJ rejected the division's argument that Smith's payments of the above citations constituted criminal convictions, although she did find that it was conclusive evidence that Smith knowingly violated federal law and therefore committed unlawful acts under AS 08.54.720(a)(8)(A). The ALJ concluded that a period of suspension was justified because Smith's actions demonstrated a disregard for the professional standards of his profession. In its order increasing the suspension time, the board noted that land use violations are very serious and a violation of public trust. AAG Robert Auth represented the division in this proceeding.

Marine Pilot Board Approves Consent Agreement

At a teleconference meeting on March 24 the Board of Marine Pilots considered and approved a consent agreement involving a marine pilot. Following the marine pilot's arrest for a DWI (and plea to a breath test refusal charge), and his failure to report to duty as dispatched, the board in January had ordered the pilot to submit to a "fitness for duty" evaluation at an out-of-state alcohol treatment facility. With the assistance of AAG Gayle Horetski, the division negotiated a consent agreement with the marine pilot that requires continued relapse prevention treatment, attendance at AA meetings, frequent random urine tests, and permanent abstinence from any consumption of alcoholic beverages. After review of the treatment facility's report, the board was willing to allow the marine pilot to return to work under the conditions described.

Human Services

Litigation Update

Section Chief Stacie Kraly and AAG Kimberly Allen continue to make substantial progress on the civil litigation related to the six lawsuits filed related to the state Personal Care Attendant Program.

The *Curyung* settlement was put on record on March 25. The section is now working with the department to implement the terms of the settlement.

Section Chief Stacie Kraly and AAG Libby Bakalar filed a motion for judgment on the pleadings in the *Psych Rights* case, arguing that Psych Rights lacks standing. Psych Rights, as plaintiff, filed a complaint for declaratory and injunctive relief in the superior court. Psych Rights is a public interest law firm that generally advocates against the use of psychotropic medications. Psych Rights claims that the state is violating the constitutional due process and statutory rights of children in state custody by administering psychotropic medication to these children without first exhausting other therapeutic remedies. The plaintiff also claims liability against the state's Medicaid program for paying for such medication. AAGs Kraly and Bakalar are also seeking to stay discovery pending resolution of the motion for judgment on the pleadings.

AAG Libby Bakalar also settled *Frances Kinberg v. SOA.* In this case, Alaska Legal Services alleged that the state had not properly noticed recipients of the general relief program prior to denying and/or terminating the recipients from the program. AAG Bakalar worked with the division to amend the notices, making them due process compliant and worked with the division on due process training in an effort to avoid similar issues in the future.

Licensing

AAG Rebecca Polizzotto provided legal advice to the Department of Health & Social Services regarding nine licensing investigations. A denial of licensure issued in February was appealed in March and has been referred to the Office of Administrative Hearings for hearing.

AAG Rebecca Polizzotto continues to represent the Department of Health & Social Services with respect to the revocation of licensure for the Mary Conrad Nursing Home originally issued in December 2008. Outside counsel has been retained to assist the Department of Law with obtaining a court appointed receiver for the facility.

Medicaid

The Third Partly Liability collections unit opened 24 cases and closed 10 cases, leaving the current matter list at 961. The unit (currently AAG Jonathan Clement and paralegal Shelly McCormick) settled 10 cases and received payments in two other cases for a total of $24,679.18. From January through March 2009, $139,307.97 has been recovered.

AAG Scott Friend has finalized a proposal for the department on how to address estate and trust recoveries for the Medicaid program. This process has been complicated by the multiple systems employed by the Department of Health & Social Services, but it appears that with the proposed system, the department would be more efficient at recovering state-owed moneys from the estates and trust remainders of Medicaid recipients.

Other

AAGs Nevhiz Calik, Kelly Henriksen, and Robin Fowler have been working on streamlining the process for getting guardianships and conservatorships for children who are aging out of state custody. All three are busy handling an ever growing and contentious adult protective services caseload.

AAG Kelly Henriksen has been working on the Health Insurance Portability and Accountability Act (HIPAA) policy and procedures for the Department of Health & Social Services and their privacy standards.

Labor and State Affairs

Elections

Kohlhaas v. State of Alaska. On March 17, four members of the Alaska Supreme Court heard oral argument in this case. At issue is whether the lieutenant governor should certify an initiative calling for the secession of Alaska from the United States. Mr. Kohlhaas argued that the initiative could be used to pose an advisory measure on the issue. The state's position is that an initiative cannot be used for advisory measures and the subject of secession is not a proper subject of an initiative. AAG Sarah Felix represented the state.

Nick v. Parnell. Plaintiffs challenge the level of assistance provided by the Division of Elections to Yup'ik speaking voters in this federal district court case. The court recently denied plaintiffs' motion for clarification of the preliminary injunction issued against the division. Plaintiffs sought to require the division to use Yup'ik sample ballots more broadly than required by the injunction, seeking distribution of the ballots to voters and any person assisting a voter. The division had provided Yup'ik sample ballots only to bilingual poll workers for use in providing translation services to Yup'ik speaking voters, which is what it understood the injunction to require. Judge Burgess denied the plaintiffs' motion. AAG Sarah Felix represents the state in this case.

Employment Security

The Commissioner of Labor and Workforce Development determined that hockey officials who referee games are employees of Anchorage Hockey Officials, Inc. (AHO), rather than independent contractors, for purposes of the Employment Security Act. The superior court affirmed, and AHO appealed. While the appeal was pending before the Alaska Supreme Court, the Department of Labor and Workforce Development and AHO resolved the case. AAG Toby Steinberger represented the department.

Motor Vehicles

Donald Logan v. State of Alaska, Division of Motor Vehicles. Donald Logan filed a complaint and temporary restraining order and preliminary injunction against the Division of Motor Vehicles to enjoin it from suspending his driver's license. He states that he is unable to attend a hearing considering whether he must take a driving test to demonstrate his ability to drive safely because of an extended stay in Brazil. Because of the length of his absence from the state, the Division of Motor Vehicles is not willing to delay the hearing until he returns. Mr. Logan avers that he needs his Alaska license to drive in Brazil, and its revocation would create irreparable harm. AAG Krista Stearns represents the division.

Daniel Poirot v. State of Alaska, Department of Administration, Division of Motor Vehicles. On March 3, the Alaska Supreme Court issued a memorandum opinion and judgment in this civil driver's license revocation case. Mr. Poirot challenged the revocation of his license for driving while intoxicated 16 years after the revocation was final. He challenged the administrative revocation after a new statute was enacted that allows drivers to apply for a shortened revocation period. Mr. Poirot asked the Division of Motor Vehicles to set aside the 1990 revocation "to avoid a manifest injustice," among other requests. The division did not address the 1990 revocation, and Mr. Poirot appealed to superior court, which affirmed. Mr. Poirot then appealed to the Alaska Supreme Court. The Court affirmed the division's decision (or inaction), finding that leaving a 1990 revocation order intact was not a manifest injustice. The Court observed that the argument could have been made earlier at the civil license revocation proceeding, and after his acquittal in a related criminal action, he could have asked the Division of

Motor Vehicles to exercise its inherent power to modify to set aside the revocation. The Court concluded that litigants should assert claims and rights through appropriate procedures, "not according to their own convenience." AAG Krista Stearns represented the division.

Notary

DeNardo v. Maassen II. On March 6, the Alaska Supreme Court dismissed a landlord tenant action involving a claim against a notary and others, for want of prosecution. Mr. DeNardo was attempting to appeal Judge Spaan's dismissal of multiple claims against multiple defendants, including a former lieutenant governor, the state's notary administrator and two superior court judges. He filed this appeal with a motion to file at public expense. When the state opposed the motion, the Court inquired into Mr. DeNardo's finances, but Mr. DeNardo largely refused to comply with the information requests. The Court eventually reduced the fee and bond, created a payment schedule, and repeatedly extended the deadline to allow Mr. DeNardo to pay the fee, but he never did. AAG Joan Wilkerson represented the state in both the lower court and on appeal.

Procurement

Kyllonen Enterprises v. Division of General Services. The Office of Administrative Hearings issued a decision in this case, which involves a procurement for lease space for the Division of Forestry's fire station in Homer. The Division of Forestry received funding to procure a new lease space for the fire station after being informed that its current facility in the Department of Transportation building was going to be demolished. Sometime during the procurement process, the Division of Forestry learned that demolition was not imminent. The division elected to proceed with the procurement. The division received two proposals, both from the protestor, and both exceeding the agency's budget. The Division of Forestry then approached the Department of Transportation to inquire about staying in its current facility and entered into a memorandum of understanding. The division then asked the Division of General Services to cancel the solicitation. Kyllonen Enterprises protested the cancellation. Administrative Law Judge Hemenway held that the Division of Forestry should have investigated whether it could stay in its current facility prior to issuing the solicitation and should have included this information in its request for proposals. The administrative law judge ordered the Division of Forestry to pay the protestor's proposal preparation costs. AAG Rachel Witty represented the state.

Workers' Compensation

Alaska R&C v. Division of Workers' Compensation. The Alaska Workers' Compensation Appeals Commission denied the division's motion for reconsideration of the commission's decision reversing the Workers' Compensation Board's imposition of a penalty on an uninsured employer. In its original decision, the commission found that the board failed to provide the employer with adequate notice of the aggravating and mitigating factors that might be taken into account in imposing a penalty. The division argued on reconsideration that the commission's decision had the effect of placing many new administrative burdens on the division in investigating the finances of uninsured employers and gathering evidence on all of the factors that the commission had enumerated. The division also argued that the commission appeared to be substituting its discretion for that of the board in assessing penalties. The commission stated that its decision was necessary to provide guidance in the absence of regulations, and clarified that the decision did not place a new burden on the division to obtain evidence favorable to the employer. AAG Rachel Witty represented the division.

Fairbanks Memorial Hospital and Harbor Adjustment Service Co. v. SOA, Second Injury Fund. The Alaska Workers' Compensation Appeals Commission issued a decision in this case handled by former AAG Larry McKinstry. Earlier, the board on reconsideration reversed its decision that the fund was liable for reimbursement of workers' compensation benefits to an employer. (The fund

reimburses qualifying employers for workers' compensation benefits paid to employees who are injured at work and whose injury combines with a preexisting condition to result in a greater injury than if the employee did not have the preexisting condition.) The fund had argued to the board on reconsideration that the employer had not given timely notice of the injury. The commission found that the fund had waived the defense of untimely notice by failing to raise it in its answer and reinstated the board's original decision ordering reimbursement.

Special thanks to AAG Margie Vandor for all of her help and support as acting supervisor during Section Chief Jan DeYoung's absences, and to AAG Jessica Srader for agreeing to cover an oral argument in May in one of AAG Mags Paton-Walsh's cases.

Legislation and Regulations

During the month the section worked on legislation and bill review analysis for the Governor's Office. Additionally, the section edited and legally approved for filing the following regulations projects: 1. Department of Natural Resources (surface coal mining and reclamation); 2. Department of Labor and Workforce Development (AVTEC tuition fees and rates); 3. Department of Environmental Conservation (state air quality control plan; drinking water; radiation protection); 4. Department of Public Safety (centralized sex offender and child kidnapper registry); 5. Department of Transportation and Public Facilities (rural airports rental rates and fees; commercial motor vehicles; weights and measures); 6. Department of Administration (commercial motor vehicle driver's licenses); 7. Board of Fisheries (Southeastern Alaska area subsistence, sport, and commercial herring and salmon fisheries and Kodiak area commercial herring fisheries; commercial groundfish fisheries; Prince William Sound area; Upper Cook Inlet and Upper Susitna River area, and Cook Inlet - Resurrection Bay saltwater area sport and commercial finfish and shellfish fisheries); 8. Department of Revenue (permanent fund dividend fees and payment delays; Civil Rule 90.3 and child support); 9. Regulatory Commission of Alaska (pipeline application procedure and supporting information for initial pipeline tariff rates); 10. Real Estate Commission (examination; disclosure of compensation); 11. State Physical Therapy and Occupational Therapy Board (continuing education requirements); and 12. Department of Health and Social Services (radiation sources and protection).

Natural Resources

Board of Game Spring Meeting

From February 27 through March 9, AAG Kevin Saxby attended the Board of Game's annual spring meeting in Anchorage. Two-hundred forty-six regulatory proposals were considered, and the meeting lasted until after 9:00 p.m. most evenings. Several controversial areas were covered, including euthanasia of wolf pups orphaned due to predator management efforts, live-trapping and live-snaring of black bears for predator management, use of helicopters, a community harvest-based caribou hunt in Unit 13 coupled with a new Tier I hunt for individuals, a divisive antler-less moose hunt in Unit 20A, and many others.

A new lawsuit was filed before the meeting ended and before final action was taken to overturn the board's new direction in Unit 13. Mr. Kenneth Manning, of Kasilof, argues pro se that the community harvest and Tier I hunt violate the subsistence law and constitutional requirements. He is seeking to preserve the previous Tier II hunt, under which a small number of mostly Anchorage and Mat-Su Valley long-time residents tended to win permits each year, with most other Alaskans permanently excluded from participation. The suit is *Manning v. State*, filed in Kenai. AAG Kevin Saxby is representing the state. No hearings have yet been held in this case, which is challenging

regulations that are still not final and have not yet been approved by the regulations attorney.

Another new suit was brought in Anchorage by the Defenders of Wildlife and Alaska Wildlife Alliance seeking to overturn the use of helicopters and Alaska Department of Fish and Game (ADF&G) staff to meet established predator control goals in the Upper Yukon/Tanana Predation Control Area. The plaintiffs did not argue that the goals themselves were invalid, but rather that the Department of Fish and Game was prohibited from acting to assist in meeting those goals unless specifically authorized to do so by the Board of Game, and sought an immediate temporary restraining order and preliminary injunction on point. The court denied the temporary restraining order, agreeing with the state that the Department of Fish and Game has independent statutory authority to conduct predator control activities. AAG Kevin Saxby represents the state in this case. The next hearing is set for May 11 after the current control season will end.

Board of Fisheries Meeting

AAG Lance Nelson participated in the Board of Fisheries meeting on statewide miscellaneous shellfish regulatory matters from March 16-March 20 in Anchorage. The board also considered emergency petitions on sablefish in Southeast Alaska and Upper Cook Inlet salmon issues.

Vandevere Litigation

The parties have completed briefing on the state's motion for summary judgment in a federal district court case where the plaintiffs claim the Board of Fisheries regulatory reductions to the commercial fisheries in Cook Inlet amount to unconstitutional uncompensated takings of their property interests in the fisheries. The Alaska Supreme Court has already decided the issue in the board's favor in state court. AAG Lance Nelson represents the board.

Kuzmin v. CFEC. On March 10, AAG Vanessa Lamantia filed the state's brief in the Alaska Supreme Court in this appeal of a Commercial Fisheries Entry Commission's (CFEC) decision denying the appellant's application for a permit in the Kodiak bairdi Tanner crab pot fishery. The state argued that because Kuzmin had no recorded landings in 2001, failed to prove that he was a partner of the gear operator, and failed to prove that he was in joint control of the fishing operation in 2001, the CFEC properly denied him skipper participation points for 2001 and properly denied his permit application.

Estate of David Miller v. CFEC. This case involves the Commercial Fisheries Entry Commission's (CFEC) denial of an application for a limited entry permit for the Northern Southeast Inside sablefish longline fishery, which application was filed by the Estate of David Miller. Mr. Miller had died a few months before the qualification date for the fishery, and the application filed by his estate was based upon his qualifications up to the date of his death. The CFEC ruled that the Estate was not qualified to apply where the fisherman's death occurred prior to the qualification date. On appeal, the Ketchikan Superior Court upheld the commission's decision. The Estate appealed to the Alaska Supreme Court, but the case has been settled. AAG Colleen Moore represented CFEC.

Endangered Species Act Issues

Polar Bear Listing Cases

The number of cases centralized in the U.S. District Court for the District of Columbia relating to the listing of the polar bear as a threatened species has grown to nine. The most recent addition is a case seeking remand of certain changes to the regulations governing consultation among federal agencies under Section 7 of the Endangered Species Act (ESA) for actions authorized, funded, or carried out by federal agencies. The State of Alaska is also now a defendant-intervenor in *Center for Biological Diversity, et al. v. Kempthorne, et al.*, and *Defenders of Wildlife v. U.S. Department of the Interior, et al.*, involving the listing decision and the

special rule issued under Endangered Species Act Section 4(d). The final special rule provided that any incidental take of polar bears resulting from activities occurring outside of the current range of the polar bear is not a prohibited act under the Endangered Species Act. A case scheduling order was issued and a second status conference is set for April.

University Lands Litigation

Southeast Alaska Conservation Council & Tongass Conservation Society v. State of Alaska & University of Alaska. On Friday, March 13, the Alaska Supreme Court issued its decision. The opinion holds that legislation conveying approximately 250,000 acres of state land to the university's endowment trust violates the dedicated funds clause of the Alaska Constitution, and remands the case to the Juneau Superior Court to: 1) order re-conveyance to the state of the land transferred under the act; 2) order return of any net proceeds received from the land; and 3) to enter judgment in favor of the appellants. Implementation of the court's opinion will greatly affect the Department of Natural Resources and the university, which have spent more than three years executing the conveyances directed in the legislation and will now be required to rescind them.

The court held that university land is state land, and that all revenue from state land is subject to the dedicated funds clause. The Alaska Supreme Court adopted appellants' argument that the university title clause of the constitution and the dedicated funds clause could be harmonized only by interpreting the university title clause to permit the university to own land but to deny the university control over proceeds from that land. The court also held, with one exception, that the trust provisions of the legislation reflected the key intent of the legislature to enhance the university's permanent endowment. As such, the trust provisions were not severable from the conveyance provisions. The court did find that a section of the legislation conveying a research forest (near Tanana) was severable as it was not income property and would not generate revenue subject to the dedicated funds clause. The court declined to address the other non-income properties on the conveyance list (which included miscellaneous educational and infrastructure properties). AAG Anne Nelson represented the state in this case.

Oil, Gas, and Mining

In 2001, the state and Cook Inlet Pipeline Company (CIPL) entered into an agreement that created a methodology for determining future intrastate tariffs. In 2007, CIPL filed a proposed tariff with the Regulatory Commission of Alaska (RCA) that deviated from the agreed tariff methodology. In response, the state filed a protest and complaint with the RCA that challenged CIPL's proposed tariff. Recently, in an effort to resolve the dispute, the RCA held a settlement conference. During the settlement conference, the state and CIPL made substantial progress towards reaching a settlement that would resolve all issues in the proceeding. The parties expect that a final settlement agreement will be filed with the RCA in sixty days. AAGs Phil Reeves and Tom Jantunen represented the state.

Opinions, Appeals & Ethics

Ethics

AAG Judy Bockmon addresses many informal ethics inquiries by email and phone on a regular basis. The section currently has four complaints under investigation, one complaint referred to the department for investigation and report, and several other preliminary investigation reviews ongoing. AAG Bockmon issued three written advisory opinions this month. The section also prepared for the Personnel Board the public summary of the fourth quarter ethics reports from all ethics supervisors. AAG Judy Bockmon has been working on a technical review of the draft regulations related to the personal use of electronic equipment and other

needed amendments and associated documents as time permits. A file has been opened for the regulations project addressing standards for paying for travel of governors' family members.

Public Records

During March, the section continued to assist the Governor's Office with responses to the many pending public records requests. With greatly appreciated help from paralegals Molly Benson, Pam Post, Gretchen Knapp, and Lori Yares, and AAGs Jonathan Clement, Jennifer Currie, Steve DeVries, Bob McFarlane, significant progress has been made on the responses to those requests.

Appeals

***Shageluk IRA Council v. State, OCS,* S-13172.** The Alaska Supreme Court issued a memorandum opinion and judgment in this child-in-need-of-aid case in which the trial court denied the tribe's petition to transfer jurisdiction. The Supreme Court affirmed the denial order.

The appeal involved a child-in-need-of-aid case initiated in the fall of 2006. The two young children involved are members of the Shageluk tribe and are "Indian children" under the Indian Child Welfare Act. Although aware of the case since its inception (and aware of the children's placement with maternal relatives at the beginning of the state case), the tribe did not intervene in the CINA case until March 2008 – 16 months into the case and two months after it received a copy of the petition to terminate parental rights and notice that a termination trial had been scheduled for the week of May 12, 2008. The tribe then waited an additional two months – until May 6, 2008 – before filing a petition to transfer jurisdiction from state court to tribal court. Because the case had reached an advanced stage and the tribe had failed to promptly request a transfer of jurisdiction after learning of the proceedings, the trial court concluded that there was good cause to deny the tribe's petition. The tribe appealed.

The Supreme Court disregarded the majority of the tribe's brief, noting that although the tribe "presents its argument in its opening brief under five headings," four of these sections did not actually contain legal arguments. As such, the court concluded that "[n]o decision was required." The Supreme Court concluded that the fifth section, in which the tribe asserted that the trial court inappropriately considered the best interests of the children, was based on a faulty premise – in that the trial court did not actually weigh the children's best interests in deciding the transfer question – making this argument irrelevant. Further noting that the tribe did not actually "argue that the superior court was wrong in concluding that the proceedings were at an advanced stage and that the Tribe had not acted promptly in seeking transfer," the Supreme Court affirmed the order denying the petition to transfer jurisdiction. AAG Lauri Owen was the trial attorney; AAG Megan Webb handled the appeal.

***D.W. v. State, OCS*, S-13137.** The Alaska Supreme Court heard oral argument in this child-in-need-of-aid case that resulted in the termination of a mother's parental rights to her three children. Although the mother had only begun abusing drugs and alcohol within the past couple of years, she had been exposed to the drug community as a young girl when she began dating a drug dealer, who would routinely abuse her and who fathered her eldest child. Several years after ending that relationship, the mother became involved with another man who sold drugs and who routinely abused her. During this relationship, she began to use and sell cocaine, conduct that continued into her second pregnancy. After an arrest on drug-related charges and the birth of twins, the Office of Children's Services became involved with the family, attempting over the next several years to help the mother resolve her drug and alcohol issues and be able to safely parent her children. The mother continued to abuse alcohol (particularly when faced with stressful life events) and switched her drug use from cocaine to prescription drugs. Based on her failure to remedy her addictions, which continued to pose a risk of harm to her children, the trial court terminated her parental rights.

The mother asserted that the trial court erred in terminating her parental rights because her children were not in need of aid; even if they were, she had remedied any harmful conduct; there was insufficient evidence to demonstrate that if the children were returned to her care they would be at substantial risk of harm; termination of parental rights was not in the children's best interests; and the testimony proffered by her probation officers should have been stricken as they were biased. The state argued that there was more than sufficient evidence to support each element of the termination case and that the trial court properly considered the probation officers' testimony. AAG Hanna Sebold was the trial attorney; AAG Megan Webb handled the appeal.

***L.A. v. State, OCS/N.M. v. State, OCS*, S13289/13288.** AAG Megan Webb filed an appellee's brief on behalf of the Office of Children's Services (OCS) in this child-in-need-of-aid case that falls under the Indian Child Welfare Act. When OCS first became involved with the family, the parents had four children. The eldest two were missing substantial amounts of school and three of the children showed developmental delays and behavioral issues. OCS worked with the family to provide services in an effort to prevent the removal of the children from the family home. After OCS learned that the father was not only using drugs, but was permitting other users into the home while his children were present, and that the mother was doing nothing to protect her children, OCS removed the children and assumed custody of them.

Over the next several years, OCS made on-going efforts to reunify the family, which grew to include two more children for a total of six. Efforts included helping the father address his substance abuse, anger management, and mental health issues, helping the mother gain insight into the harm the father's conduct created for the children and insight into how best to protect them, and providing the children with educational, medical, and mental health services. Despite such efforts, the parents' conduct remained unremedied, and in August 2008, the trial court terminated the parents' rights to the five oldest children and adjudicated the sixth as a child-in-need-of-aid. (OCS had not yet petitioned to terminate parental rights on the youngest child.)

The mother asserted that the trial court erred in terminating her parental rights because she did not neglect her children and OCS did not make active efforts to reunify the family. Rather than make an argument about why his parental rights should be re-instated, the father simply joined the mother's brief. OCS argued that there was sufficient evidence to support the order terminating the mother's parental rights and that the father had waived any challenge to the order terminating his parental rights. AAG Susan Wibker was the trial attorney; AAG Megan Webb prepared the appellate brief.

***C.G. v. State, OCS*, S-13304.** The state filed a brief in the Alaska Supreme Court on behalf of the state Office of Children's Services in this Indian Child Welfare Act case, in which a father appealed the superior court's order terminating his parental rights to two children. The trial court found that the children had been placed at risk of harm by the father's history of domestic violence and his mental health issues. The father argued that the trial court erred because he had completed an anger management program and had been violence-free for a year before the termination trial. OCS responded that (1) the father's violent tendencies continued after he completed the anger management program, (2) despite the recent lull in his violent behavior he still needed treatment for his propensity toward violence, and (3) his narcissistic personality disorder caused him to deny the existence of his issues and to refuse to engage in counseling. The father also argued that the expert testimony presented to establish that the children would likely be harmed if placed in his custody was inadequate as a matter of law under the Indian Child Welfare Act because the expert did not meet with the family members before testifying. OCS responded that while the expert did not personally interview the family members, he testified as to the specific facts

of this family rather than to mere generalities. AAG Mike Hotchkin handled this appeal.

T.W. v. State, OCS, S-13130. AAG Mike Hotchkin presented oral argument to the Alaska Supreme Court in this Indian Child Welfare Act (ICWA) case. The case involves a mother who entrusted her child to the care of another Indian person, thus creating an Indian custodianship under the provisions of ICWA. OCS removed the child from the custodian because of a substantiated report in his history of sex abuse of a minor and did not return the child to the mother because of her substance abuse issues. Once the mother stepped up and committed to working a case plan to be reunified with her child, OCS moved to have the Indian custodian's status as Indian custodian disestablished, on the theory that the mother's actions showed that she had revoked her earlier transfer of custody to the Indian custodian. The mother joined the state's motion and also explicitly revoked her transfer of custody to the Indian custodian. The trial court granted the motion and the purported Indian custodian appealed.

At the oral argument the former Indian custodian argued that once the state files a petition to begin a child-in-need-of-aid case, the status of each of the parties is frozen for as long as the case remains open and a person who was an Indian custodian when the petition was filed cannot have that status undone by any acts of the parent or the state. He based his argument on a theory that Indian custodianship status is created by Congress through ICWA, and what Congress has created the state and the parent cannot undo.

OCS argued that ICWA did not create Indian custodial status but merely recognized the special relationships that may exist in Native American societies, and that Congress did not intend by enacting ICWA to reduce or remove a parent's authority to revoke a temporary grant of custody to another person. OCS also argued that a parent's decision to revoke an Indian custodianship need not be explicit, but may be evidenced by a parent's actions toward reassuming the parental role (e.g., by committing to work a case plan toward reunification), that the parent's actions, not her words, are what determine the revocation, and that OCS's role in a parent's revocation is to determine if the parent is legitimately committing to reassuming her parental status rather than to make a substantive comparison concerning the relative merits of the parent's ability to act as the child's parent versus that of the Indian custodian.

The mother argued that revocation of an Indian custodianship is a matter in the sole discretion of the parent (implying that words alone are sufficient to undo an Indian custodianship, regardless of her actions), and the state has no role in the matter. A decision is expected by mid May.

***Fairbanks North Star Borough v. U.S. Army Corps of Engineers*, Supreme Court No. 08-1052.** The state filed an amicus brief in support of a petition for certiorari filed by the Fairbanks North Star Borough.

The case arose from a decision by the Corps that a 2.1 acre tract of land and permafrost in Fairbanks contained "waters of the United States" and was within the jurisdiction of the Corps. The borough, which owns the land, seeks to build a play-ground and athletic field on it. If the parcel is considered "wetlands" under the Corps' jurisdiction, the borough cannot develop it without a permit from the Corps. Rather than incur the substantial costs and time delays involved with filing for and waiting for an ultimate decision on the permit, Fairbanks filed an administrative appeal of the Corps' jurisdictional determination. The Corps ruled against it. Fairbanks then appealed to the federal courts and the Ninth Circuit ruled that the Corps' decision was not final and therefore could not be appealed. Fairbanks has now petitioned the Supreme Court to hear the case.

In the amicus brief, the state argued that a landowner should be able to immediately appeal a Corps decision that a parcel of land is within its

jurisdiction, rather than being forced to first spend substantial time and money on permits. The brief was written by AAGs Joanne Grace and Cam Leonard.

Regulatory Affairs and Public Advocacy (RAPA)

Successful Advocacy

U-08-25, Enstar refunds ordered. Consistent with Attorney General/RAPA advocacy, the Regulatory Commission of Alaska (RCA) recently ordered Enstar Natural Gas Co. (Enstar) to refund all qualifying customers the difference between small commercial rates and residential rates in effect since 2003. Enstar estimated that the ordered refunds may be in excess of $1.3 million, and has appealed the RCA decision to the superior court.

The case arose from complaints by Enstar customers who asserted they should have been charged a lower rate that applied to them because of a reclassification of service under the utility's tariff. In 2003, Enstar requested rate design changes but did not modify its tariff so that customers would not qualify for more than one rate. In 2008, Enstar sought reconsideration of an initial RCA decision ordering refunds to any customer who turned in a rate adjustment request after the closure of a prescribed notice period deadline, and the RCA granted a hearing to hear further evidence and arguments.

At hearing and in post-hearing briefing, the Attorney General/RAPA (AAG Gustafson) argued that applicable law, AS 42.05.371, requires that customers who qualify under two different rate schedules should always receive the more advantageous rate and that the utility did not undertake sufficient initiative to assure that all of its customers received service at the best applicable rate. On February 13, the RCA ordered Enstar to take all steps necessary to identify any of its customers who qualified for the lower residential rate and transfer them to it for future billing purposes, and to provide refunds for past overcharges. On March 13, Enstar appealed the decision to the superior court on numerous grounds and sought to stay the RCA's refund order pending the outcome of the appeal.
The Attorney General/RAPA issued a *Public Advocate Advisory* explaining the outcome and significance of the case, "Attorney General's Office Successfully Advocates for Enstar Customer Refunds", on February 20.

Settlement Agreement

U-08-61, FNG exemption. On February 26, prior to scheduled hearing, the Attorney General/RAPA and Fairbanks Natural Gas, LLC (FNG) filed a proposed settlement agreement with the Regulatory Commission of Alaska (RCA) that resolved the remaining issues in the case. On June 6, 2008, the RCA opened a proceeding to investigate FNG's exemption from rate regulation in response to an inquiry from certain members of the Alaska State Legislature. Both parties conducted discovery and pre-filed the direct testimonies of their respective witnesses, and Attorney General/RAPA later pre-filed the reply testimony of its contract economist on January 26.

Consistent with RAPA's testimony and related advocacy in the proceeding, the parties agreed that rate regulation of FNG could not be justified in the public interest at this time, and that FNG's current exemption should continue so long as the heating oil market remains sufficiently competitive. However, to protect the small portion of the residential heating market that is captive because it cannot readily switch fuels, the parties stipulated that the rates and charges for those captive customers will be prescriptively capped; that FNG will provide its customers with annual notice of its exemption and continue to maintain records of customer fuel-switching data; and that FNG will regularly report to the RCA on the development of its plans to develop North Slope LNG plant gas supply.

The RCA plans to schedule a public input hearing in Fairbanks on the proposed settlement in the near future.

New Cases

R-09-01, electric net metering, & R-09-02, interconnection standards. On February 6, the Regulatory Commission (RCA) opened two new companion dockets, R-09-01 and R-09-02, for the purpose of considering regulations that would implement a net metering requirement and an interconnection standard, respectively, to accommodate small-scale power generation in Alaska. In a prior related proceeding, R-06-05, the RCA declined to adopt federal proposals for these issues but decided to pursue Alaska-specific proposals in separate dockets.
The RCA's stated goal in R-09-01 is to create an Alaska rule that will encourage the development of distributed small-scale renewable generation, while maintaining utility system integrity and fairly apportioning costs among consumers and consumer/producers. The RCA's stated goal in R-09-02 is to craft an interconnection standard that takes into account the isolation of Alaska's grid and the small size of Alaska's electrical utilities and ensure that the addition of consumer-generation to an electric utility's system will not have negative impacts on safety, power quality, or reliability.

The Attorney General/RAPA participated in the R-06-05 predecessor proceeding and filed notices of intent to participate in the two new dockets on February 23 and March 12, respectively. RAPA attended the initial technical conferences in March to begin consideration of the RCA staff 'strawman' proposals for both the net metering standard and the interconnection standard. Reports on the work of those workshops will be forthcoming and additional sessions will likely be scheduled.

Torts and Workers' Compensation

The Alaska Supreme Court accepted the state employee defendants' petition for review in *Weed, et al. v. Bachner Co., Inc. & Bowers Investment Co.*, which is the second challenge to the award of a competitive lease contract for state office space in Fairbanks. The matter arose after two unsuccessful bidders for a state lease contract filed a bid protest under the Alaska Procurement Code. The bid protest was pursued in an administrative appeal and ultimately decided by the Alaska Supreme Court, which affirmed the administrative hearing officer's decision to award the bidders their bid preparation costs but rejected their contention that further remedies were appropriate.

The aggrieved bidders filed a separate civil tort suit against four members of the procurement evaluation committee. The superior court denied the officials' motion to dismiss the complaint and rejected their claim that they are entitled to absolute official immunity. The officials then petitioned for discretionary review. The issue is whether individual members of a state procurement evaluation committee are entitled to absolute official immunity from state law tort claims for the performance of certain core functions – namely, the evaluation and scoring of subjective components of competing bid proposals. While the superior court recognized that the officials are entitled to some form of immunity, it concluded that because the bidders alleged that the officials had committed misconduct in scoring the competing proposals, the officials are entitled to only qualified, rather than absolute, immunity.

The Supreme Court granted the petition for review, and the officials' brief was filed March 16. The brief argues that absolute immunity is appropriate under the *Aspen Exploration* test because a procurement official's evaluation and scoring of competing proposals are essential to the cost-effective functioning of state government; exposing officials to personal liability for their subjective scoring decisions would increase the frequency of tort suits and threaten the integrity of the procurement process; and multiple alternative

remedies exist that allow an injured party to obtain review of the correctness of a procurement official's actions. AAG Janell Haffner filed the state employees' opening brief.

The Kenai Superior Court recently dismissed all claims brought against the Office of Public Advocacy (OPA) in a case arising out of OPA's role as a conservator. The plaintiff alleged that in addition to protecting the interests of its conservatees, OPA also owed a duty to protect the interests of other parties that may have an interest in the conservatee's property, even if that interest was adverse to the conservatee's interest. The superior court disagreed and granted OPA's motion for summary judgment, finding that OPA owed no such duty to the plaintiff. OPA was represented in this action by AAG Rebecca Cain.

Transportation

Airport Title Opinion

The section completed a long-running project with the issuance of a comprehensive title opinion evaluating the state's land interests in the Ted Stevens Anchorage International Airport. AAGs John Steiner and Jeff Stark are happy to move on to livelier assignments.

Juneau Access

A proposed highway link to Juneau slammed into a pothole last month. The U.S. District Court ruled the Federal Highways Administration's (FHWA) review of the project under the National Environmental Policy Act failed to fully analyze the possibility of improving access to Juneau by more efficiently using existing ferries. AAG Sean Lynch filed a motion to reconsider the judgment arguing FHWA had reviewed efficiency improvements, and found those measures could not fully address surface traffic demand to Juneau.

CRIMINAL DIVISION

Anchorage DAO

Anchorage and Dillingham conducted 14 trials and 58 grand juries.

Sharon Marshall assumed the job of Chief ADA and promptly started and completed a first-degree murder trial against Ronald Christian. Christian kidnapped and tortured a young man to get the PIN for the victim's ATM card. Christian eventually shot the victim and dumped his body in an outhouse near Palmer. Christian bragged about the killing from jail while talking on a recorded phone.

ADA Ben Hofmeister tried a first-degree sexual abuse case against Hector Alvarenga. Alvarenga abused a step-daughter from ages 6 to 10. The defense alleged that Mr. Alvarenga's admissions to police were the product of his intense desire to reconcile with the girl's mother. The jury did not buy this twisted logic.

ADA Hofmeister also closed out the last of three rape prosecutions when Brenda Cleveland was sentenced to 48 years in jail for the retaliation sexual assault of a prostitute who stole drugs from Cleveland's drug-dealing friend.

The Property Crimes Unit was busy this past month. ADA Aaron Jabaay convicted Nalon Evan of recidivist theft. With dozens of prior convictions, Mr. Evan is looking at three to five years.

ADA Michelle Tschumper convicted long time felon Jimmie Richardson of evidence tampering for using a Whizzenator. Richardson took the stand and claimed that he simply wanted to avoid being remanded to jail by his probation officer because he was intending to visit his son out of state. He had used cocaine and claimed that he wasn't able to get work because he was on probation and feared that his Probation Officer would remand him for not having a job. Another example of twisted logic.

Manuel Cauatle received a 12-year composite sentence for second-degree theft and second-degree escape.

ADA Joshua Kindred won a first-degree robbery case against Jeremiah Blueford, a disgruntled man who attacked and then robbed a Marine Corps veteran who had done a tour in Iraq but was permanently, physically disabled by war injuries. The victim was hit in the head with a brick and suffered brain injury.

ADA Susan Mitchell convicted Lewis Olson of first-degree assault in Naknek. Olson beat and strangled and karate-chopped his significant other. ADA Mitchell then turned around and won a second-degree assault trial in Dillingham.

Fairbanks DAO

After being extradited from Arizona for absconding from probation and other "technical" violations, twice-convicted felony stalker Matthew Cloyd had all three and one-half years of his suspended time revoked on his first felony petition to revoke probation. The defense asked for 60 to 90 days revoked on an "equal justice" argument, asserting that it is "standard practice in the Fourth Judicial District" to only revoke up to 90 days on a first petition to revoke. They also pointed out that Cloyd had just enrolled in the batterers' intervention program and a substance abuse program. The state, however, asked that all time be imposed given Cloyd's persistent refusal to obey court orders and laws and his level of dangerousness, relying in part on findings from the sentencing judge as quoted by the Court of Appeals in a memorandum opinion and judgment affirming his original 8-year composite sentence on his stalking and violating a domestic violence protective order convictions. The Court agreed that those findings and his current conduct warranted revoking all of his probation, noting that Cloyd's failure to report and comply with the rehabilitative programs he'd been ordered to do was tantamount to a rejection of probation.

The Fairbanks grand jury has again returned an indictment against Charles Scott Stevens charging him with murder in the first-degree for the stabbing death of Billy Moreland. The stabbing is alleged to have occurred in the early hours of March 5, 2006 in the parking lot of the Monderosa restaurant and bar outside Nenana. This is the third time Stevens has been indicted for the alleged offense. He was first indicted for the murder on May 10, 2006. His trial was originally commenced in Nenana on May 29, 2007 but shortly thereafter on June 1, 2007 a mistrial was declared by the trial judge after he found that a conflict existed between Stevens' attorney and one of the witnesses who would be testifying for the state. After the mistrial was declared, Stevens hired a new attorney who filed a motion to dismiss the murder indictment. Following a hearing on the motion, the trial judge dismissed the indictment finding deficiencies in the state's presentation of evidence to the grand jury. On December 27, 2007 Stevens was indicted by a Fairbanks grand jury a second time for the murder in the first-degree. Once again following the indictment, Stevens' attorney filed a motion to dismiss the murder charge alleging a prejudicial error in the instruction presented to the grand jury regarding intoxication as a defense to an alleged intentional act. Following a hearing on the motion, the trial judge again dismissed the indictment on September 18, 2008. Re-indictment yet a third time was hindered by the intervening death of the original medical examiner and the coordination of the 23 rural witnesses required, many of whom live in remote villages around Nenana. A June trial date is now pending.

Fairbanks resident Arther Chesley was sentenced to four years, with two years suspended, following his conviction for burglary following his theft of approximately 100 pounds of one-inch copper tubing. In early October 2008 the victim reported to the Alaska State Troopers that a man was stealing things from his shed, and was able to give a vehicle description and partial plate number. After an initial sweep of the surrounding area failed to locate the suspect vehicle, the victim himself continue to search for the vehicle and reported finding it later that morning. A subsequent search

of the suspect's residence found a bundle of one-inch copper pipe found lying on top of fresh snow behind the suspect's residence. The found pipe, the victim's identification of the defendant from a photo lineup, and the fact that the suspect car seen driving away was registered to him was more convincing than the defendant's after-the-fact reporting of his car stolen and his claim that he had nothing to do with the theft. Chesley will be on supervised probation for three years following his release from incarceration on conditions which include, among other things, that he not be in possession of any scrap metal or be found on the property of any business which buys or trades in scrap metal without the prior written approval of his probation officer.

Kodiak DAO

During the first week of the month ADA Shannon Eddy managed the office while DA Stephen Wallace was on leave.

Work has remained steady in the office. A Kodiak man on release for two domestic violence assaults was arrested and charged with felony weapons assault after people in a passing vehicle reported the defendant pointed a rifle at them.

In an unrelated incident, a Kodiak man was arrested after the mother of his child reported he was striking her with a belt while she was holding the child in her arms.

A man was arrested for criminal mischief after he was observed by an Alaska State Trooper kicking and damaging the door of a marked patrol unit parked outside the trooper post.

A variety of new misdemeanor cases were charged during the month.

Mid-month Judge Ashman sentenced Jason Reandeau after presiding over a two-week trial. Thirty-eight-year-old Jason Reandeau was convicted by a Kodiak jury of sexual abuse of a minor in the second-degree and two other theories of sexual assault by contact with the 15-year-old daughter of his live-in girlfriend. Reandeau was found naked in bed with the naked 15-year-old by the victim's mother on New Year's morning 2008. Reandeau was also convicted of failing to register as a sex offender in the first-degree and two counts of misdemeanor assault on the mother. Reandeau has a prior conviction for attempted sexual assault in the first- degree from out of Unalaska in the middle 1990's. He received eight years with one suspended in that case. Eventually he served the entire sentence after losing his good time entitlement and had his probation revoked for substance abuse and failing to complete sex offender treatment.

The sex offense theories merged for sentencing purposes. Judge Ashman found Reandeau a dangerous offender and, after finding the state had established the aggravator that he had a prior more serious felony, imposed a sentence on the sexual abuse of a minor in the second-degree of 50 years with 25 suspended and probation for 15 years. The court also imposed consecutively a flat two-year presumptive term for the failure to register as a sex offender and 90 days each on the two misdemeanor assaults. His composite sentence was 27 years and 6 months to serve with 25 years suspended for the 15 year probationary term. Because of his prior sex offense, Reandeau is not eligible for statutory good time credit and therefore must serve at least the entire 25 years on the sex offense as well as a portion of the consecutive 2-year presumptive term on the failing to register as a sex offender before he will come before the parole board. When sentencing the defendant, Judge Ashman said he believed that the legislature passing the new sentencing scheme had offenders like Reandeau specifically in mind.

Palmer DAO

After a trial which lasted four weeks Frank Adams was convicted of murder in the first-degree and tampering with physical evidence. Adams killed Stacey Johnston, his girlfriend, by beating her with

his hands, feet and a splitting maul. The murder was discovered when Palmer police stopped Adams and found the victim's body in the car. Adams regularly assaulted the victim during their four-month relationship, as he had done to other women in the past. Adams was adjudicated on a murder charge as a juvenile in 1978 for beating a friend's father to death (the Palmer trial jury did not know about that). Trial prosecutors were ADAs Rachel Gernat and Alison Collins.

Mario Paradiso was convicted after a bench trial of sexual abuse of a minor in the first-degree and sexual abuse of a minor in the second-degree for sexually assaulting his two granddaughters at the Valley Hotel. In their testimony, the girls provided details of the abuse, and the state presented evidence of a recorded phone call during which the defendant stated he let things "get too far" with his granddaughters. Paradiso claimed that he was involuntarily intoxicated by the drug Ambien on the night of the sexual abuse. The state countered with the fact that Paradiso did not have a prescription for Ambien at the time and that troopers did not locate any Ambien on the defendant in his hotel room and in his belongings. The trial prosecutor was ADA Paul Roetman.

Billyjack Wigglesworth was sentenced to serve 20 years for misconduct involving a controlled substance in the second-degree and burglary in the first-degree. He had two prior felony convictions on his record. ADA Rick Allen prosecuted the case.

A Palmer jury convicted Gordon Kamholz IV of burglary in the second-degree, criminal mischief in the third-degree and criminal trespass. A homeowner in Big Lake awoke to a noise and saw a man going into his garage. After confirming it was not a neighbor, he grabbed his shotgun and went outside onto his porch. He fired the gun when he saw one man exit the garage. Another man came out of the garage, and the homeowner fired two more shots. Troopers arrived and discovered two sets of footprints in the snow, cut phone wires, and a smashed steering column of the truck parked in the garage. Troopers followed tracks in the snow through the woods to the defendant's mother's house, where defendant was located wearing wet blue jeans and wet shoes. Kamholz said he just came home from a friend's house and had passed through the victim's property to take a short cut. ADA Kerry Corliss was the trial prosecutor.

Jamison Rockwell was convicted after a jury trial of reckless driving. The defense at trial was that he was trying to get away from two large trucks that were chasing him. The two large trucks were being driven by off-duty Alaska State Troopers who called dispatch to report that Rothwell had been cutting in and out of traffic while driving over 100 miles per hour. ADA Shawn Traini prosecuted this case.

Edward Butler was sentenced to 10 years with 5 suspended and lifetime sex offender registration on two counts of sexual abuse of a minor in the second-degree. Butler was previously convicted of indecent exposure for driving around and exposing himself to young girls. ADA Rachel Gernat prosecuted the case.

Keir McGee-Vermont was sentenced to serve 15 years in prison for shaking his three-month-old baby and throwing her into a crib. The child has permanent injuries, including blindness. McGee-Vermont agreed to termination of his parental rights and restitution. The trial prosecutor was ADA Rachel Gernat.

After a bench trial in Glennallen, Robert Peck was found guilty of transporting sheep horns before meat out of the field and failure to salvage meat. Peck and his hunting partner shot two sheep and left about 25 pounds of meat on the mountain (buried under rocks). Among other things, Peck's attorney argued that the buried meat was spoiled and thus not required to be salvaged. Peck's sentence included fines, forfeiture of the sheep horns and a two year loss of hunting privileges in the state. The trial prosecutor was ADA Jarom Bangerter.

In a Valdez case, Kellye Coats pled guilty to assault in the second-degree and DUI for hitting a car head-on in Thompson Pass and injuring the occupants. Coats is subject to presumptive sentencing due to a prior drug felony for which she was on probation. ADA Mike Perry was the prosecutor.

Travis Wharton and Tanner Comoza pled guilty to robbery in the second-degree and burglary in the first-degree for entering the home of an elderly woman in Talkeetna and taking marijuana, jewelry and a firearm. Wharton was sentenced to seven years with four suspended and Comoza, who confessed and disclosed the identity of the co-defendant to police, got four years with two suspended. ADA Alison Collins prosecuted this case.

Office of Special Prosecutions and Appeals (OSPA)

Rural Prosecution Unit

The Rural Prosecution Unit traveled again this month to Bethel to cover the office for two weeks. An eight-day trial was done by one member from the unit and Bethel ADA David Buettner. Vernon Bavilla was convicted of two counts of sexual abuse in the second degree and one count of sexual abuse in the third degree.

The unit also traveled to Barrow for sentencings in two children pornography cases. One case, involving Jesse Peacock, was completed. The other case was not completed, but will be finished in Anchorage.

All attorneys in the unit traveled to Girdwood to spend most of one day meeting with Alaska State Troopers "C" Detachment Command and supervisors in hopes of improving the sexual assault investigations and the writing of reports in general.

SAVE THE DATE

NAAG Summer Meeting – Colorado Springs, CO
June 16-18, 2009

CWAG Annual Meeting - Sun Valley, Idaho
August 2-5, 2009